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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE ANDREW ARREDONDO and  
GERARDO CHAVIRA, JR.,

Defendants and Appellants.

G049966

(Super. Ct. No. 08WF1987)

O P I N I O N

Appeals from judgments of the Superior Court of Orange County,  
Gary S. Paer, Judge. Affirmed as modified as to Jesse Andrew Arredondo. Affirmed as  
to Gerardo Chavira, Jr.

Stephen M. Lathrop, under appointment by the Court of Appeal, for  
Defendant and Appellant Jesse Andrew Arredondo.

Patricia L. Brisbois, under appointment by the Court of Appeal, for  
Defendant and Appellant Gerardo Chavira, Jr.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Barry Carlton and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

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## INTRODUCTION

Defendants Jesse Andrew Arredondo and Gerardo Chavira, Jr., appeal after a jury found them each guilty of carjacking, robbery, being a felon in possession of a gun, and active participation in a criminal street gang. The jury also found Chavira guilty of felony reckless driving while attempting to evade police. We affirm the judgment of conviction against Arredondo as modified, and the judgment of conviction against Chavira in its entirety.

We conclude (1) the trial court did not err by admitting evidence that a witness, Arredondo's girlfriend, pleaded guilty to two unspecified felonies in connection with the incident giving rise to the charged offenses; (2) substantial evidence showed Arredondo was in constructive possession of the firearm in Chavira's actual possession, within the meaning of former Penal Code section 12021, subdivision (a)(1);<sup>1</sup> (3) the trial court erred by failing to stay the 10-year firearm enhancement imposed on Arredondo under section 12022.53, subdivisions (b) and (e)(1); and (4) substantial evidence showed Chavira "use[d]" a gun to commit two of the charged offenses within the meaning of section 12022.53, subdivision (b).

## FACTS

In October 2008, defendants were active members of the criminal street gang, West Side Anaheim. The gang's primary activities included possession of firearms (primarily handguns) and felony vandalism.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise specified.

Around noon on October 1, 2008, Edgar M. was standing in an alley near apartments in Stanton, talking with a friend. From about 15 feet away, Chavira called out to Edgar, “hey, come here.” After Chavira called out to Edgar a second time to “come here,” Edgar walked over to defendants, who were standing next to Edgar’s Honda Accord.

Erin Glenn was sitting in her Jetta in the alley and saw defendants approach Edgar together. Glenn had been in a dating relationship with Arredondo for about two weeks and had met Chavira a couple of days earlier. Before defendants were talking to Edgar, she was searching for money to buy gas for her car.

Chavira asked Edgar what he was doing there and Edgar told him he was with his friend. Chavira asked Edgar what he had in his wallet. Edgar said he had “a few dollars” and asked Chavira, “what did you need?” Edgar took out his wallet and opened it; Chavira grabbed \$2 out of the wallet.

Edgar explained he was afraid of defendants. He chose not to do anything and “let them take [his] stuff” because of the “way [he] was called over” and Chavira’s tone of voice, and also because he saw something was under Chavira’s shirt, which he suspected was a gun. Edgar testified that what he thought he saw in Chavira’s waistband was “exactly why [he] didn’t argue, didn’t do anything.”

Glenn testified that after defendants approached Edgar, Chavira walked to her car and handed her \$2. She drove away to get gas and later joined defendants a short time later.

Edgar emptied the contents of his pockets on the trunk of his car, including his keys. Chavira took the keys. Edgar saw Chavira pull out a handgun from his waistband and “put it on the side” before getting into the driver’s seat of Edgar’s car. The handgun was wrapped in a brown bandana; Edgar saw the wood on the handle.

Arredondo, who had been standing nearby and watching, walked up to the car and got in the passenger side of Edgar’s car. Edgar watched Chavira drive his car

away and out of sight. Edgar saw a female, driving a Volkswagen, follow defendants as they drove away in his car.

Deputy Sheriff Robert Gardner of the Orange County Sheriff's Department was dispatched to respond to a reported carjacking. He met with Edgar who told him what had happened in the alley. Edgar said Chavira had asked him, "do you bang?" and Edgar had told Chavira he was not a gang member and did not bang. (Edgar testified at trial that he did not remember telling police that Chavira asked that question or that Edgar responded.) Edgar also told Gardner that Chavira "was tugging at his T-shirt which was untucked from his waistband, kind of motioning around his waistband area."

Later that same afternoon, Edgar's car was spotted and Patrol Officer Richard Siemensma attempted to conduct a traffic stop by activating the emergency lights and siren of the black-and-white marked patrol car he was driving. Edgar's car sped up to a high rate of speed. After running red lights, travelling on the wrong side of the road, and colliding with multiple vehicles, Edgar's car became disabled after it crashed into another vehicle. Chavira had been in the driver's seat and a female was seated in the front passenger seat. Arredondo and Glenn had been seated in the backseat. An officer found a loaded handgun on the floorboard of the passenger side of the car.

Glenn testified that she had pleaded guilty and was convicted of two unspecified felonies "in connection with this case."

Gang expert Nathan Stauber testified that brown and gold are colors associated with the West Side Anaheim criminal street gang. He testified that when a gang member is in possession of a gun, that information is shared among gang members. He explained that in gang culture, gang members share guns among themselves and when gang members are out together, they know where the gun is located in case they are confronted by rivals. After being given a hypothetical scenario based on facts similar to those facts of the instant case, Stauber testified that in his expert opinion, defendants committed the charged offenses for the benefit of their gang because committing violent

acts builds the reputation of the gang and its individual members. He also testified that carjacking is a violent offense and the use of a gun in committing that offense “bolsters the violence” level.

Defendants stipulated they each had suffered a prior felony conviction.

### PROCEDURAL HISTORY

Defendants were charged in an amended information with (1) carjacking in violation of section 215, subdivision (a) (count 1); (2) second degree robbery in violation of sections 211 and 212.5, subdivision (c) (count 2); (3) possession of a firearm by a felon in violation of former section 12021, subdivision(a)(1) (count 3);<sup>2</sup> and (4) street terrorism in violation of section 186.22, subdivision (a) (count 5). Chavira was also charged with one count of evading while driving recklessly in violation of Vehicle Code section 2800.2.

The amended information contained the following enhancement allegations: (1) as to counts 1, 2, and 3, and pursuant to section 186.22, subdivision (b)(1), defendants committed the offenses for the benefit of, at the direction of, or in association with a criminal street gang; (2) as to counts 1 and 2, Chavira personally used a firearm during the commission of the offenses within the meaning of section 12022.53, subdivision (b); and (3) as to counts 1 and 2, pursuant to section 12022.53, subdivisions (b) and (e)(1), and within the meaning of sections 1192.7 and 667.5, Arredondo “was a principal in the commission [of] a felony, which [he] committed for the benefit of, at the direction of, and in association with a criminal street gang, with the specific intent to promote, further, and assist in criminal conduct by gang members, within the meaning of Penal Code section 186.22(b), and that during the

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<sup>2</sup> The amended information alleged defendants had previously been convicted of felonies. Chavira had been previously convicted of unlawful possession of a specified controlled substance while armed with a firearm, in violation of Health and Safety Code section 11370.1, subdivision (a), and Arredondo had been previously convicted of assault, in violation of section 245, subdivision (a)(2).

commission and attempted commission of the above offense[s], another principal in the offense[s] used a firearm.”

The amended information contained the following prior conviction allegations: (1) pursuant to section 667.5, subdivision (b), Chavira had served a prior prison term;<sup>3</sup> and (2) pursuant to sections 667, subdivisions (d) and (e)(1) and 1170.12, subdivisions (b) and (c)(1), Arredondo was previously convicted of a serious felony for which, pursuant to section 667.5, subdivision (b), he had served a prior prison term.

The jury found Arredondo guilty on all counts as charged and found true the enhancement allegations alleged against him. The trial court found the prior conviction allegation alleged against Arredondo true. The court sentenced Arredondo to a total prison term of 30 years to life in state prison with the possibility of parole.

The jury found Chavira guilty on all counts as charged and found true the enhancement allegations alleged against him. The trial court found the prior conviction allegation as to Chavira true. Chavira was sentenced to a total prison term of 29 years to life.

Defendants each filed a notice of appeal.

## DISCUSSION

### I.

#### ARREDONDO’S ISSUES ON APPEAL

##### A.

*The trial court did not err by admitting evidence that Glenn pleaded guilty to and was convicted of two felony offenses in connection with this case.*

Arredondo contends the trial court erred by admitting evidence that Glenn pleaded guilty to two felony offenses in connection with this incident. He argues the trial

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<sup>3</sup> The trial court granted the prosecution’s motion to dismiss one of the prior prison term allegations against Chavira.

court abused its discretion by ruling that the probative value of that evidence outweighed its prejudicial effect under Evidence Code section 352.

Evidence Code section 352 provides: “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” In *People v. Eubanks* (2011) 53 Cal.4th 110, 144, the California Supreme Court reiterated: “‘Evidence is substantially more prejudicial than probative [citation] [only] if, broadly stated, it poses an intolerable “risk to the fairness of the proceedings or the reliability of the outcome” [citation].’ [Citation.] “‘The prejudice which . . . Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.” [Citations.] “Rather, the statute uses the word in its etymological sense of ‘prejudging’ a person or cause on the basis of extraneous factors.’” [Citations.]”

During trial, shortly before Glenn was called as a witness by the prosecution, Arredondo’s counsel argued that the prosecutor should not be permitted to delve into Glenn’s conviction of two felonies in connection with this case (including aiding and abetting a carjacking), following her entering a guilty plea. Arredondo’s counsel expressed his concern that evidence Glenn has pleaded guilty to the felonies would cause the jury to conclude “then everybody must have been guilty,” thereby undermining Arredondo’s “defense of mere presence.”

The court stated that Arredondo would not lose that defense by the admission of evidence of Glenn’s felony convictions, but that the court would be “willing to sanitize it.” The court observed that “a trial is a search for the truth” and the exclusion of any reference of Glenn’s felony convictions would paint an inaccurate picture of the relevant circumstances. The court found the evidence probative as to Glenn’s credibility.

Glenn proceeded to testify that (1) she had pleaded guilty to two felonies “in connection with this case”; (2) at that time, she was represented by an attorney on whose advice she had pleaded guilty; and (3) her guilty plea was not conditioned on her agreement to testify in court.

Following Glenn’s testimony, the court instructed the jury, as agreed to by the prosecutor and Arredondo’s counsel, as follows: “The testimony by [Erin] Glenn regarding her involvement in the crimes charged in this case and her plea to certain crimes may only be used to assess Erin Glenn’s credibility. Do not speculate as to what charges were alleged or admitted to by witness Erin Glenn. Refer to CALCRIM instruction 316 for further instruction on this evidence. [¶] Your duty in this case is to decide whether the defendants on trial here committed the crimes they are charged with.”

The court then read CALCRIM No. 316 to the jury, as follows: “If you find that a witness has been convicted of a felony, you may consider that fact in evaluating the credibility of the witness’ testimony. The fact of a conviction does not necessarily destroy or impair a witness’ credibility. It is up to you to decide the weight of that fact and whether that fact makes the witness less believable.” The court repeated those two instructions at the end of the case.

Evidence of Glenn’s convictions was relevant to her credibility as a trial witness and its potential prejudicial effect did not outweigh its probative value. Any prejudicial effect of that evidence was mitigated by the limited scope of information conveyed to the jury about Glenn’s convictions and by the court’s special instruction expressly instructing the jury to consider that evidence only in evaluating Glenn’s credibility. (*People v. Pearson* (2013) 56 Cal.4th 393, 414 [“We presume that jurors understand and follow the court’s instructions.”].)

Even if the admission of the evidence of Glenn’s convictions constituted error, any such error was harmless under *People v. Watson* (1956) 46 Cal.2d 818, 836, in light of not only the limited scope of the evidence presented regarding Glenn’s felony



convictions and the special limiting instruction and CALCRIM No. 316 given to the jury by the court, but also by the overwhelming evidence of Arredondo's guilt. (*People v. Lenart* (2004) 32 Cal.4th 1107, 1125.) Substantial evidence showed Arredondo along with Chavira, both members of the West Side Anaheim criminal street gang, confronted Edgar in an alley. Arredondo watched as Chavira, who had a handgun under his shirt, take Edgar's money and car keys. The gang expert testified that gang members communicate about the location of any handguns used by the gang. Defendants got into Edgar's car and drove away. Before Chavira got into Edgar's car, he removed the gun from under his shirt and put it on the side; the gun was covered in a brown bandana—the color associated with West Side Anaheim.

In light of the foregoing, “[n]or are we persuaded that admission of this evidence violated defendant’s right to due process of law under our federal Constitution, requiring us to determine whether the claimed error was harmless beyond a reasonable doubt (*Chapman v. California* (1967) 386 U.S. 18, 24 . . .).” (*People v. Lenart, supra*, 32 Cal.4th at p. 1125.)

## B.

*Substantial evidence supported Arredondo’s conviction for possession of a firearm by a felon in violation of former section 12021, subdivision (a)(1).*

“When considering a challenge to the sufficiency of the evidence to support a conviction, we review the entire record in the light most favorable to the judgment to determine whether it contains substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] . . . We presume in support of the judgment the existence of every fact the trier of fact reasonably could infer from the evidence. [Citation.] If the circumstances reasonably justify the trier of fact’s findings, reversal of the judgment is not warranted simply because the circumstances might also

reasonably be reconciled with a contrary finding. [Citation.] A reviewing court neither reweighs evidence nor reevaluates a witness's credibility. [Citation.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 27.) The testimony of a single witness, unless physically impossible or inherently improbable, is sufficient to support a conviction. (Evid. Code, § 411; *People v. Young* (2005) 34 Cal.4th 1149, 1181.)

Arredondo contends insufficient evidence supported his conviction for possession of a firearm by a felon in violation of former section 12021, subdivision (a)(1). The elements of an offense under former section 12021, subdivision (a)(1) were (1) a felony conviction and (2) ownership, possession, custody, or control of a firearm. (*People v. Jeffers* (1996) 41 Cal.App.4th 917, 922.) Specific criminal intent is not required under former section 12021, subdivision (a)(1), and general criminal intent is sufficient to sustain a conviction. (*People v. Spirlin* (2000) 81 Cal.App.4th 119, 130.) Possession of the firearm may be actual or constructive as long as possession is intentional. (*Ibid.*)

Arredondo does not dispute that he had suffered a prior conviction within the meaning of former section 12021, subdivision (a)(1). He solely challenges his conviction for violating that statute on the ground insufficient evidence showed he was in constructive possession of the firearm in Chavira's actual possession. "To establish constructive possession, the prosecution must prove a defendant knowingly exercised a right to control the prohibited item, either directly or through another person. [Citations.] Possession may be shared with others. [Citation.] But mere proximity to the weapon, standing alone, is not sufficient evidence of possession." (*People v. Sifuentes* (2011) 195 Cal.App.4th 1410, 1417 (*Sifuentes*).) Possession may be established by circumstantial evidence and any reasonable inferences to be drawn from such evidence. (*People v. Williams* (1971) 5 Cal.3d 211, 215.)

In this case, Arredondo accompanied fellow gang member, Chavira, as the two confronted Edgar in an alley. Chavira had a gun under his shirt; Edgar thought Chavira likely had a gun with him. After Chavira took Edgar's money and car keys, Chavira removed the gun (wrapped in a brown bandana) and put it in the car before he got into the car. Arredondo got into the car and defendants drove away together. Arredondo remained with Chavira through the subsequent high-speed police chase. An officer recovered the gun on the car's passenger side floorboard, following the chase. This evidence along with the gang expert witness's testimony was sufficient to support the reasonable inference that Arredondo had the right and authority to handle the gun if the need arose.

*Sifuentes, supra*, 195 Cal.App.4th 1410, is factually distinguishable from this case. In *Sifuentes*, law enforcement officers found defendants Reno Sifuentes and Juan Lopez, who were both convicted felons, in a motel room with two women. (*Id.* at pp. 1413-1414.) When the officers entered the room, Sifuentes was lying on top of the bed nearest the door and Lopez was kneeling on the floor on the far side of the second bed. (*Ibid.*) A loaded handgun was later found under the mattress next to where Lopez had been kneeling. (*Ibid.*) A gang expert testified about Sifuentes's and Lopez's gang affiliations and further testified about the use of a "gang gun" shared freely among gang members in criminal street gangs. (*Id.* at pp. 1414-1415.)

A panel of this court held that insufficient evidence supported Sifuentes's conviction for violation of former section 12021, subdivision (a)(1), based on a theory of constructive possession. (*Sifuentes, supra*, 195 Cal.App.4th at p. 1419.) The court stated, *inter alia*, the prosecution's gang expert did not testify that any gun possessed by a gang member automatically constituted a gang gun shared by all other gang members, and no other evidence showed Sifuentes had the right to control the gun found under the mattress of the bed where Lopez was kneeling in the motel room. (*Id.* at p. 1417.)

Unlike the gun, hidden in a personal space by one defendant, found in the motel room in which Sifuentes was present, here, Chavira carried the handgun as he and fellow gang member, Arredondo, confronted Edgar and shortly thereafter engaged in joint criminal activity by robbing him of his money and his car. *Sifuentes* is therefore distinguishable.

C.

*Arredondo's 10-year firearm enhancement imposed under section 12022.53, subdivisions (b) and (e)(1) should have been stayed.*

In his opening brief, Arredondo argues: “The trial court imposed a mandatory term of life with a 15-year minimum parole eligibility on count 1 (carjacking), pursuant to Penal Code section 186.22, subdivision (b)(4), plus a consecutive term of 10 years for the firearm enhancement, pursuant to Penal Code section 12022.53, subdivisions ([b]) and (e)(1).” He further argues that because he was neither charged with nor convicted of the *personal* use of a firearm, but instead was charged with and convicted of the vicarious use of a firearm, the 10-year consecutive term for the firearm enhancement must be stricken.

The California Supreme Court has explained: “Section 12022.53’s sentencing scheme distinguishes between four types of offenders. The first group consists of those offenders who personally used or discharged a firearm in committing a gang-related offense that is specified in section 12022.53. These defendants are subject to *both* to the harsh enhancement provisions of 12022.53 *and* the gang-related sentence increases of section 186.22. The second group consists of *accomplices* to a gang-related offense specified in section 12022.53 in which, as here, not the defendant but another principal personally used or discharged a firearm. They are subject to additional punishment under *either* section 12022.53 *or* the gang-related sentence increases under section 186.22, but not *both*.” (*People v. Brookfield* (2009) 47 Cal.4th 583, 593-594.)

The third and fourth types of offenders are irrelevant here as they involve nongang-related firearm use. (*Id.* at p. 594.)

The Supreme Court in *People v. Brookfield* held: “[A] defendant who *personally* used or discharged a firearm in a gang-related felony specified in section 12022.53 will be subject to greater punishment for *both* gang participation under section 186.22 *and* firearm use under section 12022.53, but an accomplice who, as defendant here, did not personally use or discharge a firearm would be subject to an increased sentence under *only one* of those two statutes.” (*People v. Brookfield, supra*, 47 Cal.4th at p. 594.) The court further held: “[W]e conclude that the word ‘enhancement’ in section 12022.53(e)(2) refers to both the sentence enhancements in section 186.22 *and* the penalty provisions in that statute. Thus, that provision barred the trial court here from imposing *both* the penalty of a life term under section 186.22(b)(4) and the 10-year sentence enhancement under subdivisions (b) and (e)(1) of section 12022.53.” (*Id.* at p. 595.)

In *People v. Gonzalez* (2008) 43 Cal.4th 1118, 1130, the Supreme Court held: “We conclude section 12022.53 requires that, after a trial court imposes punishment for the section 12022.53 firearm enhancement with the longest term of imprisonment, the remaining section 12022.53 firearm enhancements and any section 12022.5 firearm enhancements that were found true for the same crime must be imposed and then *stayed*.” (Italics added.)

Citing *People v. Gonzalez, supra*, 43 Cal.4th 1118, in the respondent’s brief, the Attorney General argues the 10-year firearm enhancement should have been stayed, but not stricken. In his reply brief, Arredondo states his agreement with the Attorney General “that the remedy is to stay the enhancement.” In light of the foregoing, we modify Arredondo’s sentence to reflect that the 10-year firearm enhancement under section 12022.53, subdivisions (b) and (e)(1) be stayed.

## II.

### CHAVIRA'S ISSUES ON APPEAL

#### A.

*Substantial evidence showed Chavira “use[d]” a gun to commit the robbery and carjacking offenses within the meaning of section 12022.53, subdivision (b).*

Chavira asserts the evidence did not support the jury's finding under section 12022.53, subdivision (b) that he personally used a firearm in committing the offenses of robbery and carjacking. Whether a defendant personally used a firearm is a factual question for the jury to decide. (*People v. Masbruch* (1996) 13 Cal.4th 1001, 1007.) We review the sufficiency of the evidence to support a firearm use enhancement under the substantial evidence standard. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) “The test is whether substantial evidence supports the decision, not whether the evidence proves guilt beyond a reasonable doubt.” (*People v. Mincey* (1992) 2 Cal.4th 408, 432.)

To prove the firearm enhancement, the prosecution must show that a person displayed a firearm in a menacing manner, intentionally fired it, or intentionally struck or hit a human being with it. (§ 1203.06, subd. (b)(2).) Here, the jury was so instructed with CALCRIM No. 3146. As there is no evidence Chavira fired the handgun or intentionally struck or hit anyone with it, we review the record to determine whether substantial evidence supported the jury's finding he displayed it in a menacing manner, and conclude sufficient evidence supports that finding.<sup>4</sup>

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<sup>4</sup> In *People v. Granado* (1996) 49 Cal.App.4th 317, 325, the appellate court stated, “if the defendant is found on substantial evidence to have displayed a firearm in order to facilitate the commission of an underlying crime, a use of the gun has occurred both as a matter of plain English and of carrying out the intent of section 12022.5(a). Thus when a defendant deliberately shows a gun, or otherwise makes its presence known, and there is no evidence to suggest any purpose other than intimidating the victim (or others) so as to successfully complete the underlying offense, the jury is entitled to find a facilitative use rather than an incidental or inadvertent exposure.”

Substantial evidence showed Edgar was standing in an alley when he was told by Chavira to approach defendants. Edgar saw Chavira tugging at his shirt and saw something under Chavira's shirt that he thought looked like it might be a handgun. Edgar testified his fear that Chavira had a handgun prompted him to cooperate with defendants by complying with Chavira's demands to hand over his money and allow Chavira to take his car keys. A reasonable juror could find that Chavira used the gun, and was not merely armed with it, because the presence of the gun was visible under Chavira's shirt and Chavira tugged at his shirt, motioning around his waistband, and thereby drew Edgar's attention to it. Chavira thereby ensured Edgar's cooperation with the demands that Edgar hand over his money and car keys. Then, by removing the gun from under his shirt, Chavira ensured Edgar's continued cooperation as Chavira climbed into the driver's seat of Edgar's car and drove away.

That evidence was therefore sufficient for a reasonable trier of fact to find, beyond a reasonable doubt, that Chavira *used* a firearm within the meaning of section 12022.53, subdivision (b) to commit the offenses of robbery and carjacking.

## B.

*None of Arredondo's contentions on appeal benefits Chavira.*

Citing rule 8.200(a)(5) of the California Rules of Court, Chavira states in his opening brief that he "prospectively joins in the arguments raised by his co-appellant to the extent such arguments are to his benefit." (Chavira's opening brief was filed before Arredondo's opening brief was filed.) In his reply brief, Chavira states: "The only argument that applies to [Chavira] that was raised by Arredondo relates to the court's abuse of discretion in permitting in evidence that the accomplice Erin Glenn had . . . pleaded guilty to two felonies relating to the same incident for which appellants were being tried and the resulting prejudice there from."

For the reasons discussed *ante*, the trial court did not abuse its discretion in admitting that evidence.

#### DISPOSITION

The judgment as to Arredondo is modified to reflect that the 10-year firearm enhancement imposed under section 12022.53, subdivisions (b) and (e)(1) is stayed and is affirmed in all other respects. We direct the trial court to prepare and forward to the Department of Corrections and Rehabilitation a new abstract of judgment reflecting the modified sentence. The judgment as to Chavira is affirmed in its entirety.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

ARONSON, J.